CLERK'S COPY

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1930

No. 125

WALTER E. CARR, DIRECTOR OF IMMIGRATION OF THE UNITED STATES FOR THE LOS ANGELES DISTRICT, NO. 31, PETITIONER

vs.

MATEO ZAJA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED MAY 16, 1930
CERTIORARI GRANTED OCTOBER 13, 1930

SUPREME COURT OF THE UNITED STATES

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1-2 [Citation in usual form showing service on J. Edw. Keating and T. E. Bowen, filed Nov. 8, 1929, omitted in printing.]

3 In United States District Court, Southern District of California, Southern Division

No. 9630-M, Cr.

In the matter of MATEO ZAJA on habeas corpus

Complaint and petition for writ of habeas corpus and order allowing same

Filed Mar. 25, 1929

It is respectfully shown by the petition of Mateo Zaja that said petitioner is unlawfully a prisoner and unlawfully detained, confined, and restrained of his liberty by Walter E. Carr, district director of district No. 31, Immigration Service, Department of Labor of the United States of America, to wit, in the city of Los Angeles, State of California; that said imprisonment, detention, confinement, and restraint are illegal and that the illegality thereof consists in this, to wit:

I

4 That petitioner is an alien, thirty-five years of age, unmarried, and of the Dalmatian race, having been born in Arzans, Dalmatia; that the sole claim or authority by which said Walter E. Carr restrains and detains and imprisons and confines petitioner is a certain warrant issued by the Secretary of Labor of the United States, dated on or about the 20th day of December, 1928, directing the deportation of petitioner to Jugoslavia as an alien not entitled to be or remain in the United States; that prior thereto, and on or about the 4th day of October, 1928, detained was taken into custody by said Walter E. Carr without right, authority, or any warrant whatsoever and that a warrant for the arrest of your petitioner was issued and dated October 5, 1928, and issued by said Secretary of Labor of the United States; that ever since the said 4th day of October, 1928, said detained has been and still is unlawfully and illegally restrained of his liberty and under the custody of said Walter E. Carr and under the pretended authority of said warrants.

II

That the said Secretary of Labor of the United States acted unfairly, arbitrarily, and exceeded his authority and abused his discretion in issuing the order for deportation of petitioner in that there is no evidence in the record of the Immigration Service and there was no evidence adduced at the deportation proceedings to sustain any of the findings upon which said warrant of deportation is based;

that said warrant of deportation rests solely upon the following purported finding, to wit:

"That he remained in the United States for a longer time than permitted under the act of 1924 or regulations made thereunder, having entered the United States at San Pedro, California, on January 21, 1925."

That there was no evidence before said Secretary of Labor or those acting in aid or assistance of him to sustain said finding.

III

That said finding does not state facts sufficient to support or authorize the deportation of detained.

IV

That detained entered the United States on the 21st day of January, 1925, as an alien seaman, and then and there at the port of San Pedro, California, deserted his ship and entered the United States; that ever since said 21st day of January, 1925, petitioner has remained in and continuously resided in the United States and has continuously and at all time been engaged in the occupation of a seaman and has never abandoned said calling; that petitioner was not taken into custody by respondent until the 4th day of October, 1928, and that more than three years had then elapsed since the last entry of petitioner into the United States; that the provisions of section 34 of the immigration act of 1917 (8 U. S. Code 166) prohibit the deportation of petitioner.

V

That petitioner has not in his possession a copy of the immigration record or evidence applicable for the deportation proceedings against him and cannot secure said copy of proceedings and evidence to file with this petition; but petitioner stipulates and agrees that when the original records and evidence are received and presented for consideration that the same may be introduced in this proceeding as of the same force and effect as if filed herewith as part and parcel of this petition.

VI

That said Secretary of Labor of the United States acted unfairly and arbitrarily and exceeded his authority and abused his discretion in issuing said warrant for the deportation of your petitioner in that the entire proceedings, including the first warrant for the arrest of your petitioner and the hearing thereon and the proceedings thereafter, denied your petitioner a fair hearing; that said first warrant for the arrest of your said petitioner and said hearing before respondent, as aforesaid, and the proceedings thereafter are

all and singular unfair to your petitioner in each and every of the following particulars, to wit:

(a) That your petitioner was ordered deported without any evidence whatsoever to sustain the charge and findings upon which said order is based.

(b) That after said Secretary of Labor had made his order directing the deportation of petitioner, petitioner applied to said Secretary of Labor for a reopening to enable him to introduce evidence in the particulars stated in said petition, a copy of which is hereto attached, marked "Exhibit A," and by this reference made a part hereof as though set forth in full, together with the affidavit of petitioner hereto attached, marked "Exhibit B"; that no previous application for a writ of habeas corpus has been made in this matter; that respondent is threatening to deport detained within the next few days, the exact time of which your petitioner cannot ascertain, making it impossible for this matter to be held on notice; that respondent has given notice that this petition is to be presented to this court.

7 Wherefore the petitioner prays that a writ of habeas corpus issue out of and under the seal of this court, directing the said Walter E. Carr, district director of Immigration Service as aforesaid, to have the body of the said detained before this honorable court at a time and place to be in said writ specified, together with the true cause of his detention, to the end that due inquiry may be had in the premises, and your petitioner prays that this court may proceed in a summary way to determine the facts in the case and the legality of detained's imprisonment, restraint, and detention, thereupon to dispose of detained as law and justice require.

J. EDWARD KEATING,
THEODORE E. BOWEN,
Attorneys for Petitioner.

[*Duly sworn to by Mateo Zaja; jurat omitted in printing.*]

8 Let the writ of habeas corpus prayed for issue, returnable before the court of Paul J. McCormick, at 10 o'clock a. m. on the 1st day of April, 1929; pending hearing thereon petitioner to be released on $500 bond.

Dated this 25th day of March, 1929.

WM. P. JAMES, *Judge.*

POINTS AND AUTHORITIES

Petitioner contends that the writ should issue, and in support thereof cites the following authorities:

Immigration act of 1917, section 34 (8 U. S. Code 166).
In re Lackides, 10 Fed. (2) 980.
Nagle vs. Hansen, 17 Fed. (2d) 557.

J. EDWARD KEATING,
THEODORE E. BOWEN,
Attorneys for Petitioner.

9 *Exhibit A to complaint and petition*

In the United States Department of Labor, before the Bureau of Immigration

In the matter of MATEO ZAJA, warrant proceedings

L. A. File No. 29270/175

PETITION FOR REOPENING

Comes now the alien above named and petitions the Immigration Service to reopen the hearing in the above-entitled matter to give petitioner an opportunity to present evidence to show that he has a right to be and remain in the United States, and to give petitioner's counsel an opportunity of reargueing the case before the board of review.

Petitioner is in possession of evidence which will establish conclusively that at all times since he has been in the United States he has been engaged in the occupation of a seaman and will produce evidence showing exactly his movements at the time of arrival and his occupation from that time until the present; that at the time of the hearing petitioner was not advised of the materiality of the above evidence and did not have an opportunity to present this evidence and the particulars more fully set forth in affidavit of petitioner hereto attached.

At the conclusion of the hearing petitioner's counsel desires an opportunity to argue before the board of review that the three-year period of limitation applies to this case, and that section 3 of the immigration act of 1917 has not been repealed by the provisions of the 1924 act, in accordance with the decision of the Circuit
10 Court of Appeals for the Ninth Circuit in Nagle vs. Hansen, 17 Fed. (2d) 557, at 558.

Wherefore petitioner prays that an order be made staying the order of deportation until this petition is acted upon, the rehearing had, and the case reargued before the board of review, and further, that petitioner be allowed to introduce additional evidence material to the issue.

J. EDWARD KEATING,
THEODORE E. BOWEN,
Attorneys for Petitioner.

Exhibit B to complaint and petition

In the United States Department of Labor, before the Bureau of Immigration

In the matter of MATEO ZAJA, warrant proceedings

L. A. File No. 29270/805

AFFIDAVIT OF MATEO ZAJA

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Mateo Zaja, being duly sworn, deposes and says that he is in possession of evidence to establish the fact that he has never been outside of the United States since his arrival on or about January 21st, 1925, and that ever since that date affiant has been engaged in his occupation as a seaman and that he has never abandoned the same;
11 that in the report of investigation upon which the warrant of arrest in petitioner's case was issued appears the following question and answer:

"Q. Have you ever worked on a ship since you landed here in San Pedro in January, 1925?

"A. No. Nobody knew me and I couldn't get a job on a ship. I went to work digging ditches and worked as a laborer on the Y. M. C. A. building."

Affiant states that he did not fully understand said question, nor its purport, and that the answer there set down is not complete.

That in truth and in fact affiant has been continuously engaged on a boat as a seaman ever since his arrival in the United States, with the exception of short periods of times when he was unable to obtain such employment.

Further affiant sayeth not.

MATEO ZAJA.

Subscribed and sworn to before me this 25th day of March, 1929.

R. S. ZIMMERMAN,
Clerk, U. S. District Court,
Southern District of California,
By B. B. HANSEN, *Deputy.*

[File endorsement omitted.]

12 In United States District Court

Writ of habeas corpus

Filed Mar. 25, 1929

The President of the United States to Walter E. Carr, Director of Immigration of the United States for the Los Angeles District, No. 31, Greeting:

You are hereby commanded to have the body of Mateo Zaja, by you imprisoned, by whatever name he shall be called, the petitioner for a writ of habeas corpus in the above-entitled case, before the above-entitled court and the honorable Paul J. McCormick, judge of said court, at the court room of said court, in the city of Los Angeles, California, on the 1st day of April, 1929, at 10 o'clock a. m., to do and receive what shall then and there be commanded in the premises, and have you then and there this writ.

Witness the honorable Paul J. McCormick, judge of the said United States District Court for the Southern District of California, Southern Division.

Dated March 25th, 1929.

[SEAL.]

R. S. ZIMMERMAN, *Clerk*,
By B. B. HANSEN.

[File endorsement omitted.]

13 Received copy of the within writ and copy of petition this 25 day of March, 1929.

WALTER E. CARR,
By JOSEPH A. CONATY,
Assistant District Director.

In United States District Court

[Title omitted.]

Return to writ of habeas corpus

Filed April 11, 1929

I, Joseph A. Conaty, acting district director of the United States Immigration Service, immigration district No. 31, at Los Angeles, California, respondent herein, for my return to the writ of habeas corpus in the above case admit, deny, and allege as follows:

I

Respondent alleges that the petitioner herein is an alien; that he is a citizen of Jugoslavia and of the Dalmatian race; that he signed on the Italian S. S. "Livenza" at Hamburg, Germany, about No-

vember, 1924, as a seaman; that he arrived at San Pedro, California, on or about January 21, 1925, on said vessel and deserted therefrom; that within sixty days after such desertion petitioner did not re-
ship from the United States but on the contrary abandoned
14 his calling as a seaman and has since continued to reside within the United States. Respondent further alleges that on the 5th day of October, 1928, the Secretary of Labor caused his warrant to be issued directing that petitioner be taken into custody and that he be given a hearing to show cause why petitioner should not be deported from the United States; that petitioner was taken into custody under said warrant and was accorded a hearing, at which time petitioner was represented by counsel, and at which hearing a competent Dalmatian interpreter was employed; that at the conclusion of said hearing respondent's counsel submitted a brief, and the entire record was thereafter transmitted to the Secretary of Labor at Washington, D. C.; that the record was reviewed and the Secretary of Labor found that petitioner was in the United States in violation of the immigration act of May 26, 1924, and caused his warrant to be issued on the 20th day of December, 1928, directing petitioner's deportation to Jugoslavia on the ground that petitioner "had remained in the United States for a longer time than permitted under the said act or regulations made thereunder." Respondent further alleges that while holding petitioner for deportation in accordance with the above warrant of deportation writ of habeas corpus was served on respondent and said petitioner was thereafter released under bond by order of this honorable court. It is impossible, therefore, for respondent to produce the body of petitioner before this honorable court at the time and place indicated in the writ of habeas corpus.

II

Respondent admits the truth of that part of allegation No.
15 I of the petition wherein it is alleged that respondent's authority for restraining petitioner is a certain warrant of deportation dated the 20th day of December, 1928. Respondent denies the allegation that such restraint under such warrant is unlawful, but alleges said warrant was issued after due hearing held in accordance with law and the rules and regulations based thereon, and that such restraint is lawful.

III

Respondent denies that part of allegation No. 2 of the petition wherein it is alleged that the Secretary of Labor acted unfairly, arbitrarily, and in excess of authority, and that he abused his discretion in issuing an order of deportation, and that there was no evidence in the record of the Immigration Service and no evidence adduced at the deportation proceedings to sustain the findings upon which the warrant of deportation was based, but alleges that the hearing which resulted in the issuance of the war-

rant of deportation was fairly conducted; that it was based on sufficient evidence to justify the deportation order; and in the entire proceeding the Secretary of Labor and those acting in aid or assistance of him acted fairly and without abusing their discretion.

IV

Respondent denies the truth of allegation No. 3 of the petition wherein it is stated that the finding did not state facts sufficient to support or authorize the deportation of petitioner. Respondent alleges that the finding does state facts sufficient to support and authorize the deportation order.

V

Respondent admits the truth of that part of allegation No.
16 4 of the petition wherein it is stated that petitioner entered the United States on the 21st day of January, 1925, and that petitioner has continued to reside in the United States since that time. Respondent denies, however, that part of said allegation wherein it is alleged that at all times since petitioner's entry on the date aforesaid he has engaged in the occupation of a seaman and has never abandoned said calling. Respondent alleges that petitioner did abandon said calling and that his status as a seaman terminated at the end of the sixty-day period immediately following petitioner's desertion of the vessel at San Pedro on the 21st day of January, 1925. Respondent admits that petitioner was not taken into custody within three years after his desertion, as aforesaid, but alleges that the desertion of petitioner and his abandonment of his seaman's status does not accord petitioner the exemption to which bona fide seamen are entitled under section 34 of the immigration act of 1917.

VI

Respondent denies that the Secretary of Labor acted unfairly, arbitrarily, and abused his discretion in issuing said warrant for deportation of petitioner, but alleges that the hearing was fair in all respects and in accordance with law and the rules and regulations based thereon. Respondent further denies that the deportation order was issued without evidence to sustain the charge and finding upon which said order was based, but alleges that the evidence was sufficient to justify the order of deportation. Respondent admits that after the Secretary of Labor had made his order directing deportation of petitioner that petitioner applied to the Secretary of Labor for a reopening of the case to enable petitioner to introduce evidence as to his right to be and remain in the
17 United States, request for which reopening is set forth in Exhibit A, attached to the petition and made a part thereof by reference, but denies that such action on the part of the Secretary of Labor was unfair.

Wherefore respondent prays dismissal of this writ of habeas corpus and further prays that the petitioner, Matteo Zaja, be remanded to said respondent for deportation in accordance with the terms of the warrant in respondent's possession.

JOSEPH A. CONATY,
Acting District Director.

[Duly sworn to by Joseph A. Conaty; jurat omitted in printing.]

18 [File endorsement omitted.]

Return to Writ Received copy of within Return this 11 day of April, 1929.

J. EDWARD KEATING,
THEODORE E. BOWEN,
Attorneys for Petitioner.

In United States District Court

[Title omitted.]

Order re traverse, etc.

April 15, 1929

This matter coming on at this time for hearing on return of writ, Theodore E. Bowen, Esq., appearing as counsel for the petitioner, and Gwyn Redwine, assistant United States attorney, appearing as counsel for the Government, it is by the court ordered that the petition be submitted upon briefs to be filed; petitioner's brief to be
19 filed on May 10th, 1929, respondent's brief to be filed fifteen days thereafter, and petitioner's closing brief five days after the filing of respondent's brief; and by stipulation it is ordered that the petition herein filed shall be deemed a traverse to the return to the writ filed herein.

In United States District Court

Order discharging from custody

Aug. 9, 1929

The petitioner, Mateo Zaja, is discharged from custody (see Nagle, etc., v. Hansen, 17 Fed. 2nd, 9 C. C. A., P. 557), and an exception to the aforesaid decision is hereby noted and reserved for respondent.

In United States District Court

[Title omitted.]

Petition for appeal and order allowing same

Filed Nov. 8, 1929

Walter E. Carr, director of immigration of the United
20 States for the Los Angeles district, No. 31, petitioner and

appellant herein, deeming himself aggrieved by the judgment and order entered herein on August 9th, 1929, does hereby appeal from said order and judgment to the United States Circuit Court of Appeals for the Ninth Circuit and prays that a transcript of record of the proceedings and papers on which said order and judgment were made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Judicial District of the United States.

Dated November 8th, 1929.

SAMUEL W. MCNABB,
United States Attorney.
GWYN S. REDWINE,
Assistant United States Attorney.
P. V. DAVIS,
Assistant United States Attorney.

ORDER

Now, to wit, on the 8th day of November, 1929, it is ordered that the above petition for appeal be granted and that the said appeal be allowed as prayed for.

WM. P. JAMES,
United States District Judge.

Acting for Judge McCormick, who decided the case and who is in New York City.

[File endorsement omitted.]

21 Received copy of the within petition this 8 day of November, 1929.

J. EDW. KEATING,
and THEODORE E. BOWEN,
Attorney for Petitioner.

In United States District Court

[Title omitted.]

Assignments of error

Filed Nov. 8, 1929

Comes now Walter E. Carr, director of immigration of the United States for the Los Angeles district, No. 31, and presents the following assignments of error in the decision of the District Court for the Southern District of California, Central Division, as follows:

1. The court erred in granting the petition of the above-named Mateo Zaja for a writ of habeas corpus and in issuing such writ.

2. The court erred in discharging said Mateo Zaja from the custody of the appellant.

3. The court erred in holding and deciding that the above-named Mateo Zaja is not subject to deportation and is entitled to remain in the United States.

22 4. The court erred in holding and deciding that said Mateo Zaja was denied due process of law in the deportation proceedings.

5. The court erred in holding and deciding that the said Mateo Zaja did not have a fair trial in the Immigration Department proceedings.

6. The court erred in holding and deciding that the deportation proceedings were unfair because of the refusal of the Secretary of Labor to re-open the case and allow the said Mateo Zaja to produce further evidence in his behalf relative to his status as a "seaman."

7. The court erred in holding and deciding that the said Mateo Zaja was not found in the United States in violation of the immigration act approved May 26, 1924.

8. The court erred in holding and deciding that there was not sufficient evidence to support the findings made by the Secretary of Labor in said deportation proceedings.

9. The court erred in holding and deciding that the findings of the Secretary of Labor were not sufficient upon which to base the warrant of deportation.

Dated November 8th, 1929.

SAMUEL W. MCNABB,
United States Attorney.
GWYN S. REDWINE,
Assistant United States Attorney.
P. V. DAVIS,
Assistant United States Attorney.

23 [File endorsement omitted.]

Received copy of within assignments this 8 day of November, 1929.

J. EDW. KEATING,
& THEODORE E. BOWEN,
Attorney for Petitioner.

In United States District Court

[Title omitted.]

Notice of appeal

Filed Nov. 8, 1929

To MATEO ZAJA,
Petitioner and Appellee,
And to J. EDWARD KEATING and THEODORE E. BOWEN,
Attorneys for said Mateo Zaja.

You, and each of you, will please take notice that Walter E. Carr, director of immigration of the United States for the Los

Angeles district, No. 31, the respondent and appellant, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment and order of the above-entitled District Court, discharging said Mateo Zaja from the custody of said respondent and appellant, entered in the above-entitled cause on August 9th, 1929, and that a certified transcript of record will be filed in the said Appellate Court within thirty days of the filing of this notice.

Dated November 8th, 1929.

SAMUEL W. MCNABB,
United States Attorney.
GWYN S. REDWINE,
Assistant United States Attorney.
P. V. DAVIS,
Assistant United States Attorney.

[File endorsement omitted.]

Received copy of within notice this 8 day of November, 1929.

J. EDW. KEATING
& THEODORE E. BOWEN,
Attorney for Petitioner.

In United States District Court

[Title omitted.]

Stipulation regarding original records and files of Department of Labor

Filed Nov. 8, 1929

It is hereby stipulated and agreed by and between Samuel W. McNabb, United States attorney for the Southern District of California, Central Division and Gwyn S. Redwine, and P. V. Davis, Assistant United States attorneys for said district, attorneys for Walter E. Carr, director of immigration of the United States for the Los Angeles District No. 31, appellant, and J. Edward Keating and Theodore E. Bowen, attorneys for the appellee herein, that the original files and records of the Department of Labor covering the deportation proceedings against the said appellee which were filed in the hearing in the above-entitled case may be by the clerk of this court sent up to the clerk of the United States Circuit Court of Appeals, Ninth Circuit, as part of the appellate record in order that said original immigration files may be considered by the Circuit Court of Appeals for the Ninth Circuit in lieu of certi-

fied copy of said records and files and that said original records may be transmitted as part of said appellate record.

Dated November 8, 1929.

SAMUEL W. McNABB,
United States Attorney,
GWYN S. REDWINE,
Assistant United States Attorney,
P. V. DAVIS,
Assistant United States Attorney,
Attorneys for Walter E. Carr.
J. EDWARD KEATING,
THEODORE E. BOWEN,
Attorneys for Mateo Zaja.

26 In United States District Court.

Order to transmit original records

Filed Nov. 8, 1929

On the foregoing stipulation of counsel it is by the court ordered that the original records in the United States Immigration Office, filed herein on the hearing of the return of the said appellant, Walter E. Carr, district director of the United States Immigration Service for the Los Angeles District, No. 31, to the writ of habeas corpus herein, be transmitted by the clerk of this court to the United States Circuit Court of Appeals for the Ninth Circuit as original exhibits in lieu of a certified copy of said records and files and that the same may not be printed.

Dated this 8th day of November, 1929.

WM. P. JAMES,
United States District Judge.

Acting for Judge McCormick, who is in New York City.

[File endorsement omitted.]

27 In United States District Court

[Title omitted.]

Præcipe for transcript of record on appeal

Filed Nov. 8, 1929

To the Clerk of the Above-entitled Court:

You will please prepare and duly authenticate the transcript and the following portions of the record in the above-entitled case for appeal of said appellant heretofore allowed to the United States Circuit Court of Appeals for the Ninth Circuit, to wit:

1. Complaint and petition for writ of habeas corpus.

2. Order granting writ of habeas corpus and fixing bond pending hearing thereon.

3. Writ of habeas corpus.
4. Return to writ of habeas corpus.
5. Order discharging said Mateo Zaja from custody of the said Walter E. Carr as director of immigration.
6. Petition for appeal.
7. Order allowing appeal.
8. Notice of appeal.
9. Assignments of error.
10. Stipulation that original files and records in the Department of Labor be sent to the clerk of the Circuit Court as part of the appelate record.

28 11. Order for transmission of original exhibits.
12. Citation.
13. This præcipe.
14. Record showing traverse to return on writ of habeas corpus.

Dated November 8th, 1929.

SAMUEL W. MCNABB,
United States Attorney.
GWYN S. REDWINE,
Assistant United States Attorney.
P. V. DAVIS,
Assistant United States Attorney.

[File endorsement omitted.]

Received copy of the within præcipe this 8th day of November, 1929.

J. EDW. KEATING,
THEODORE E. BOWEN,
Attorney for Petitioner.

29 [Clerk's certificate to foregoing transcript omitted in printing.]

30–31 [Minute entry of argument and submission, Feb. 12, 1930, omitted in printing.]

32 In United States Circuit Court of Appeals, Ninth Circuit

No. 6026

WALTER E. CARR, DIRECTOR OF IMMIGRATION, ETC., APPELLANT

vs.

MATEO ZAJA, APPELLEE

Order directing filing of opinion and filing and recording of decree

Feb. 17, 1930

By direction of the court, ordered that the typewritten opinion this day rendered by this court in above cause be forthwith filed by the

clerk and that a decree be filed and recorded in the minutes of this court in accordance with the opinion filed.

33 In United States Circuit Court of Appeals for the Ninth Circuit

No. 6026

In the matter of MATEO ZAJA on habeas corpus

WALTER E. CARR, DIRECTOR OF IMMIGRATION OF THE UNITED STATES for the Los Angeles District, No. 31, appellant

vs.

MATEO ZAJA, APPELLEE

Upon appeal from the United States District Court for the Southern District of California, Central Division

Before RUDKIN, DIETRICH, and WILBUR, Circuit Judges

Opinion

Filed Feb. 17, 1930

DIETRICH, Circuit Judge:

In November, 1924, the appellee, Mateo Zaja, who, it is not questioned, was then a seaman, signed on the Italian steamship "Livenza" at Hamburg, Germany. The vessel arrived at San Pedro, California, on or about January 21, 1925, whereupon appellee deserted therefrom and entered the United States, where since that time he has continuously resided. On October 19, 1928, he was taken into custody under a warrant for his deportation, and after a hearing in due course a deportation order was made. By the court below a writ of habeas corpus was granted discharging him from the custody of the immigration officials, and the director of immigration appeals.

34 In the facts material to the application of the statute of limitations the case does not differ from Nagle v. Hansen, decided by this court in February, 1927 (17 Fed. (2d) 557). Upon a reexamination of the acts of 1917 and 1924, therein referred to, we adhere to the conclusion there reached. Appellee cites with apparent confidence United States ex rel. Rios v. Day (24 Fed. (2d) 654), but in that case the statute of limitations was not involved and it is not clear that in any respect it is to be deemed out of harmony with Nagle v. Hansen. Accordingly the judgment is affirmed.

[File endorsement omitted.]

35 In United States Circuit Court of Appeals for the Ninth Circuit

No. 6026

WALTER E. CARR, AS DIRECTOR OF IMMIGRATION OF THE UNITED STATES for the Los Angeles District, No. 31, appellant

vs.

MATEO ZAJA, APPELLEE

Decree

Filed Feb. 17, 1930

Appeal from the District Court of the United States for the Southern District of California, Central Division

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Southern District of California, Central Division, and was duly submitted.

On consideration whereof it is now here ordered, adjudged, and decreed by the court that the order of the said District Court in this cause be, and hereby is, affirmed.

[File endorsement omitted.]

36 [Clerk's certificate to foregoing transcript omitted in printing.]

37 Supreme Court of the United States

Order allowing certiorari

Filed October 13, 1930

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted, and the case is assigned for hearing immediately following case No. 92, Demetrius Philippides vs. Benjamin M. Day, commissioner of immigration, port of New York.

And it is further ordered that the duly certified copy of the transcript of the proceedings below, which accompanied the petition, shall be treated as though filed in response to such writ.

[Endorsement on cover:] Filed No. 35037. U. S. Circuit Court of Appeals, Ninth Circuit. Term No. 125. Walter E. Carr, director of immigration of the United States for the Los Angeles district, No. 31, petitioner, vs. Mateo Zaja. Petition for writ of certiorari and exhibit thereto. Filed May 16, 1930. File No. 35037.

U. S. GOVERNMENT PRINTING OFFICE: 1930